

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 579 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

1 to 5 -No

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STATE OF GUJARAT

Versus

CHHIBUBHAI MANIBHAI

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Appearance:

PUBLIC PROSECUTOR for Petitioner

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/02/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

State, being aggrieved by an order of acquittal recorded by the learned Additional Sessions Judge, Navsari in Sessions Case No.74 of 1995, whereby the respondent-accused has been acquitted for an offence punishable under Sec.302 of Indian Penal Code, has

preferred this appeal.

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#. As per the prosecution case, on 14-2-1995, one Ashwinbhai Bajubhai conveyed that accused has caused injury with stick and stones to Niruben on her face, private parts and on her back. It is further the prosecution case that on 16-2-1995 at about 6 p.m., Minaben was conveyed the said information and Niruben-deceased later on became serious and hence, was admitted in the hospital at Udhvada and thereafter at Pardi.

#. As per prosecution case, incident took place in the house of accused, a thickly populated locality between 4 and 5 p.m., yet from neighbourhood, none is examined. Ordinarily, neighbours would come first. No reason is given for non-examination.

#. Learned Judge in para 10 has observed that Medical Officer during post-mortem has not found any injuries caused to the deceased on her private part. It is specifically stated by the Medical Officer that there was no injury on the person of the deceased on her private parts. Deceased succumbed to the injuries as per the prosecution case on 16th February, 1995. Till then, she has not conveyed the information to others about the incident. No dying declaration was recorded.

#. The prosecution has relied on extra judicial confession made by the accused. Learned Judge in para 9 has observed that on 15-2-1995, at the house of accused, Naranbhai, Sukkarbhai, Ramubhai and other persons caught-hold the accused and Sarpanch slapped the accused and all persons stated that till he does not admit the guilt, he will be beaten. It is clear from the evidence of Nitaben, that no reliance can be placed on prosecution evidence.

#. Learned Additional Public Prosecutor has taken us through the record and proceedings which has been called for and he could not point out anything from the record indicating that the order of acquittal recorded by the learned Additional Sessions Judge requires interference. He could not point out that the view taken by the learned Judge, could not have been taken on the basis of evidence on record.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of STATE OF KARNATAKA VS.

HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

4. In view of what is stated above, we do not find it necessary to interfere with the judgment and order passed by the learned Additional Sessions Judge, Navsari in Sessions Case No.74 of 1995 on 18-3-1997. In the result, appeal is dismissed.

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